

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Website address www.dir.ca.gov/oshsbATTACHMENT NO. 3INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 12, Section 3427(a) of the
General Industry Safety Orders

Tree Work – Safe Work ProceduresSUMMARY

This rulemaking action was initiated as a result of Standards Board staff review and evaluation of the requirements contained in the General Industry Safety Orders (GISO), Section 3427 “Safe Work Procedures” for tree work, maintenance or removal. Existing Section 3427(a)(1) requires that a visual inspection of trees be made prior to entry and that the safest method of entering the tree be determined. The proposed amendments seek to require that visual inspection of trees prior to entry are performed by a qualified person and that the safest method of entry into the tree is determined and used.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTIONSubsection (a)(1)

Section 3427 is located in GISO, Article 12, “Tree Work, Maintenance or Removal.” Existing Section 3427 provides regulations for safe working procedures. Section 3427(a) is entitled “Climbing” and subsection (a)(1) requires that trees are visually inspected to determine the safest method of entry into the tree as described in the section. An editorial amendment is proposed to add the word “access” to the title of subsection (a) so that it reads “Climbing and Access.” This amendment is necessary to better describe and clarify the provisions of this subsection.

Subsection (a)(1) requires a visual inspection of the tree. However, the regulation does not identify who must perform the inspection. An amendment is proposed to identify that a “qualified person” must visually inspect the tree. The proposed amendment is necessary to ensure that a person designated by the employer with the appropriate training and experience performs the visual inspection. A further amendment is proposed and necessary to ensure that the safest method of entry into the tree is not only determined, but is used.

As mentioned above, subsection (a)(1) requires that trees be visually inspected to determine the safest method of entry into the tree as described in the section. However, subsection (a) only describes provisions for climbing trees, which may not always be the safest or best method of entry into the tree. For example, a tree with dead or decaying sections or limbs with energized electrical lines running through or near the tree may be entered/accessed for the necessary work by a safer means than climbing such as the use of an aerial device. Therefore, in subsection (a)(1) the phrase, “as described in this section” is proposed for deletion and is necessary to provide safe options for tree entry/access by means other than climbing.

A non-substantial editorial revision for clarity identifies the second sentence in subsection (a)(1) as subsection (a)(2) and the remaining regulations in subsection (a) are appropriately renumbered in sequential order as subsections (a)(3) through (a)(6).

DOCUMENTS RELIED UPON

1. Decision of the Occupational Safety and Health Appeals Board dated May 18, 2001 in the Matter of the Appeal by Davey Tree Surgery Company, Docket No. 99-R2D1-2906.
2. Decision After Reconsideration from the Occupational Safety and Health Appeals Board dated October 4, 2002 in the Matter of the Appeal by Davey Tree Surgery Company, Docket No. 99-R2D1-2906.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. The existing regulation requires that a visual inspection of trees be made to determine the safest method of entry into the tree. The proposal clarifies that the safest method determined for entry into the tree is to be used and provides the employer a performance standard in the selection of the safest method for tree entry.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Also, see comments under the heading above titled “Specific Technology or Equipment.”

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a mandate. Therefore reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program with the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.